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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/135,046 10/12/93 GARVIN

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CRANE, D	EXAMINER
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C2M1/0411

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ART UNIT	PAPER NUMBER
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3201

DATE MAILED:

04/11/96

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/135,046**

Applicant(s)  
**Garvin**

Examiner  
**Daniel Crane**

Group Art Unit  
**3201**



☒ Responsive to communication(s) filed on Jan 30, 1996

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-6 and 9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-6 and 9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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#### **STATUTE CITATION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### **REJECTION OF CLAIMS OVER PRIOR ART**

**Claims 1-6 and 9** rejected under 35 U.S.C. § 103 as being unpatentable over **Eggenmuller** (3,687,061) in view of **Taylor** (4,230,676). The claimed method and apparatus is substantially shown by Eggenmuller in Figure 10, for example, where a bag 49 is positioned on the filling machine comprising tube holder 51 and boundary wall (shield) 8 so that the filled bag 49 is provided with a ventilating conduit 54. Several ventilating pipes can be provided and positioned over the entire length of the mass of material (see column 7, lines 61-65, of Eggenmuller). Eggenmuller does not indicate that the conduits are perforated and that the conduits can be connected to a media source. However, the use of perforated conduits in the ventilation of material masses is common in the art as evidenced by Taylor. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Eggenmuller's method and apparatus by modifying the conduit 54 by providing the conduit with multiply perforations and connecting the conduit to a media source as evidenced by Taylor so as to

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improve and speed up the ventilation and fermentation of the material in the bag. See Taylor, at column 1, where,

"Because of the new, increased, and everincreasing, demand for compost fertilizing material it is necessary to **speed up** the composting process and improve the quality of the compost produced. It is, therefore, a primary object of the present invention to provide an apparatus which can be used to improve composting of natural materials" (emphasis added, lines 29-35)

"Also, it is an object of the invention to provide a plurality of conduits which may be variably positioned inside the compost pile to drain off liquids therein as well as **act as passageways for introducing air**, seed micro-organisms, water and other material as may be necessary to enhance the composting process into the compost pile." (emphasis added, lines 39-45)

As to the method step of "providing a vent in the bag", this provision is considered to be an inherent feature within Eggenmuller's procedure since the opening through which the pipe extends would serve as a "venting" implement because of the inherent leakage adjacent to the pipe at this location. Since the method claim does not specify the particular positioning of the "vent" in the bag, it is maintained that this noted opening of the bag would operate as such.

**Claims 6 and 9** are rejected under 35 U.S.C. § 103 as being unpatentable over **Cullen** (5,426,910). Cullen's claimed invention is directed to the same claimed invention in that treatment of bagged contents is accomplished by a bag filling machine where a perforated conduit is fed through the bag filling machine as the

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bag is filled and deployed from the bag filling machine. Although the conflicting claims are not identical, they are not patentably distinct from each other because the apparatus claimed by applicants is an obvious simplification of the patented bagging machine. Since the claims are broadened apparatus constructions of the claimed Cullen invention, an affidavit swearing behind the reference (as submitted by applicants) cannot be used to overcome the reference. Specifically, it is maintained that the skilled artisan in this art would have recognized that a "pipe support" (Claim 1, last paragraph, of the Cullen (5,426,910) reference) could have been dispensed with so as to permit manual support of the pipe during its feeding and positioning within the filled bag. It is also noted herein, that this "pipe support", even though not claimed by applicant, is somewhat of an inherent provision in the apparatus because "support" for the pipe would necessarily be required during the operation of the apparatus. This is the case whether the pipe is "supported" while on a reel or simply supported in its elongated form.

#### **RESPONSE TO APPLICANTS' COMMENTS**

Applicant's response has been carefully considered, however, applicant's remarks are not persuasive. Applicant has amended the two independent claims, method claim 1 and apparatus claim 6,

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by bringing out a limitation directed to the bag. Accordingly, the method now further involves an additional step of "providing a vent in the bag..." while the apparatus now includes the limitation that the bag used in the apparatus includes a "vent" "...through which material in the bag may be treated by forcing a media through the conduit and through the material in the bag followed by venting to the atmosphere".

As the new limitation applies to the claimed method, it is the examiner's position that the "vent in the bag" is a broad provision and is descriptive of any opening within the bag. In this regard, inherent gaps between the pipe 54 and bag, where the pipe extends out of the bag, constitutes a "venting" means. It is well within the purview of the skilled artisan that venting would occur through portions of these gaps. Clearly, any leakage around these gaps, particularly when multiple pipes are used, would function as "vents". Therefore, it is the examiner's position that the amended method claims do not define over the combination of Eggenmuller and Taylor, contrary to applicant's arguments. Without locating the vent relative to the bag open end and pipe (as noted to be critical by applicant at page 9, first full paragraph, of the specification), the procedure of simply "providing a vent in the bag" is considered obvious in view of the applied prior art. Applicant's arguments relating to the "even" distribution of the media within the bag is

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unsupported by the claimed language because the act of providing a "vent", in its broadest form, does not necessarily effect this result.

As to the applicability of the Eggenmuller and Taylor teachings against the apparatus claims, these teachings are fully applicable because the apparatus claims are directed to an "apparatus for filling a large plastic bag..." with the specific construction of the bag offering no definitive attributes to the apparatus, per se. Clearly, the apparatus is unchanged whether the apparatus fills a bag with or without a vent.

Applicant further maintains that there is no incentive to convert Eggenmuller's ventilating pipes to treatment conduits because Eggenmuller suggests the use of one-way valves. However, Eggenmuller is concerned with the production of silage, which requires high concentrations of moisture to enhance the fermentation of the grain. Eggenmuller's pipes 54 facilitate the venting of the contents of the bag during fermentation. Taylor similarly is directed to a procedure for enhancing or speeding up of the composting of enclosed contents where the contents can be injected with fluid (air) through perforated pipes embedded within the contents. Taylor's process speeds up the reaction process of the contents. Accordingly, the incentive to modify Eggenmuller's fermentation procedure would be to connect the pipe

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to a media source in a manner taught by Taylor so as to speed up the fermentation process.

It is not the examiner's position that perforated pipe would necessarily produce a continuous conduit extending lengthwise through bagged material. However, Taylor makes this evident with perforated pipe.

Contrary to applicants' comments concerning the "laying" of the conduit during the bagging process, note that Eggenmuller's conduit 54 shown in Figure 10 is laid during filling as the bag is deployed from the machine. This is the case, particularly, during the early stages of the filling operation where the conduit 54 and shield 8 are immediately adjacent to the tunnel 35.

The Cullen document remains applicable against the apparatus claims for the reasons set forth in the preceding Office Actions. Applicants' comments on page 6 of the response of January 30, 1996 has misinterpreted the Examiner's comments at Page 5 of the previous Office Action. It is the examiner's position that the omitting of an element (reel support) from the Cullen claimed invention is considered to be an obvious variation to the inventive subject matter set out in the Cullen reference. The examiner's intent was not to say that the reel support is not essential.



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Applicant has relied upon the decision in *General Foods v. Studiengesellschaft Kohle MbH*, 23 USPQ 2d 1839, to give support to the position that the claims of the present application are not the same as the claims set out in the Cullen reference. Applicants seem to stress that only a part of the invention set out in the Cullen patent is being claimed in the present application. And, accordingly, based upon the noted decision, these are not the same inventions and, therefore, no double patenting exists between the two claimed inventions. While an arguable comparison can be made between the present situation and that of the noted decision, the issues are quite different. The obviousness involved to obtain an obviousness double patenting in the noted decision requires extensive elimination of process steps. Furthermore, the alleged double patenting claims noted in the decision involve different objectives, are patentably distinguishable and are separate and distinct inventions. Whereas, in the present case, the objectives are the same and the inventions cannot be said to be patentably distinguishable, as highlighted in previous Office Actions and emphasized in MPEP 2308 and 2308.01. In applicant's case, the elimination involves only one element with the outcome being capable of being performed by hand. Accordingly, the application of the noted decision is not apropos to the present issues.

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**PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meier (3,934,999) has been cited to show the use of content-filled flexible bags having vent holes for facilitating composting.

**FINAL OFFICE ACTION**

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

**INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is (703) 308-1870. The

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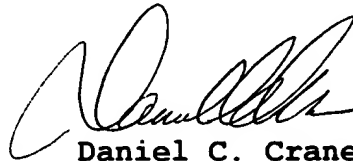
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examiner's supervisor, Mr. J. Sipos, can be reached at **(703) 308-1882**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3200 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3200 Facsimile Center number is **(703) 305-3579**.

DCCrane (20W)  
March 29, 1996



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3201